



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/158174

PRELIMINARY RECITALS

Pursuant to a petition filed June 05, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on July 10, 2014, at Waukesha, Wisconsin.

NOTE: The record was held open for the day to allow the agency to provide a copy of the overpayment notice and the overpayment worksheets, as well as the budget print out. The agency provided a copy of a repayment agreement dated May 14, 2014 and an overpayment worksheet dated May 14, 2014, that have been collectively marked as Exhibit 7. No overpayment notice was provided.

The budget print out was marked as Exhibit 9.

The record was also held open to give the Petitioner's son/representative an opportunity to submit documentation showing the Petitioner's pension income. It has been marked as Exhibit 8.

The issue for determination is whether Waukesha County Health and Human Services correctly determined the Petitioner was overissued FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kathy Jones, Economi Support Specialist
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner's wife passed away in July 2013. (Testimony of Petitioner's son and Ms. Jones)
3. On August 2, 2013, the agency sent the Petitioner a notice indicating that as of September 1, 2013, his Foodshare benefits would be increased from \$128.00 per month to \$140.00 per month, because his wife was no longer included in the assistance group. (Exhibit 3)
4. The August 2, 2013 notice indicated that the FoodShare allotment was based upon income that included the wife's Pension (\$217.06) and her Social Security Income (\$461.00), as well as Petitioner's Social Security Income (\$805.00). (Exhibit 3)
5. The payments from Petitioner's wife's pension were actually transferred to the Petitioner on November 1, 2013, at which time the Petitioner received a gross lump sum payment totaling \$859.40; \$644.55 for September 2013 and \$214.85 for October 2013. (Exhibit 8; Testimony of Petitioner's son)
6. In February 2014, the Petitioner completed a renewal, at which time the Petitioner indicated that he was 86 years old and received income from a pension (\$214) and from Social Security in the amount of \$819.00 per month. (Exhibit 6)
7. After receiving verification of the pension income, the agency realized that it had not previously budgeted that income when determining Petitioner's FoodShare allotment. (Testimony of Ms. Jones)
8. On March 13, 2014, the agency sent Petitioner a notice indicating that effective April 1, 2014, he would be receiving FoodShare benefits in the amount of \$59.00 per month. (Exhibit 5)
9. On May 14, 2014, the agency sent the Petitioner a repayment agreement indicating that he had been overpaid FoodShare benefits in the amount of \$452.30. (Exhibit 7)
10. The agency also sent the Petitioner an overpayment worksheet for claim number [REDACTED] indicating the overpayment period was for the months of November 2013 through March 2014. (Exhibit 7)
11. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on June 5, 2014. (Exhibit 1)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), emphasis added; see also *FoodShare Wisconsin Handbook (FSH)*, App. § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient overcome the county agency's evidence of correct action.

A notice of FoodShare Overissuance, a completed Overissuance Worksheet and a Repayment agreement must be sent to the client. *FSH* §7.3.1.8 In the case at hand, the agency provided no documentation showing that it sent the Petitioner a notice of FoodShare Overissuance. As such, there is insufficient evidence in the record to show that the agency properly notified the Petitioner of the overpayment.

If the agency had properly notified the Petitioner of the overpayment, I would have found that the agency incorrectly counted November 2013 in its calculation of the overpayment and that any other resulting overpayment was due to agency error.

According to *FSH §6.1.1.1*, Food Units in which all members are Elderly (over age 60), blind or disabled, must report certain changes within 10 days of the date the change is known to the food unit. This includes any increase in unearned income that exceeds \$50 per month.

The payments from Petitioner's wife's pension were transferred to the Petitioner effective November 1, 2014. Petitioner received a lump sum payment on November 1, 2013, for back payments from his deceased wife's pension to cover money owed for September 2013 and October 2013. Per *F.S.H. §4.5.5*, this non-recurring lump sum payment should have been counted as an asset, not income.

After November 1, 2013, the Petitioner apparently began receiving monthly pension payments in the amount of \$214.85. Thus, per to *FSH §6.1.1.1*, the Petitioner would have needed to report that change in income within ten days of becoming aware of the change, presumably within ten days of November 1, 2013, which would make the reporting deadline November 11, 2013. The agency would then have ten days (until November 21, 2014) to act on the reported change. *FSH §6.1.3* If the reported change resulted in a negative action, such as the reduction of benefits, the agency would have to give the Petitioner at least ten days notice before the effective date of the change. *FSH §6.3.1* Thus, any change reported in November would only have affected benefits for December.

It should also be noted that per *FSH §6.1.3.6*, for changes that result in a decrease in benefits, the agency must allow for adequate negative notice (10 days) to be issued to the customer. *See also FSH §6.3.1* "If verifications are not received within 10 days, and the FS case is not closed for at least one day, make the change effective the first of the month following the month verifications are received." *FSH §6.1.3.6*

Based upon all of the foregoing, the overpayment period would begin in December 2013.

The notice sent to the Petitioner in August 2013, indicated that the agency took into account income from his wife's pension when calculating his FoodShare allotment. However, Ms. Jones testified that the subject overpayment occurred because, in actuality, the agency did not budget the income from Petitioner's wife's pension when calculating the Petitioner's FoodShare benefits for September 2013 through March 2014.

There is no evidence in the record showing that the agency made the Petitioner aware of the fact that it was no longer budgeting his wife's pension income. The last communication prior to the Petitioner's February renewal was the August 2013 notice, indicating that the agency was including the pension income. As such, the Petitioner would not have known that there was any change in income that he needed to report in November 2013, when his wife's pension payments were formally transferred to his name. Thus, any resulting overpayment was due to agency error.

In summary, the agency will have to issue a notice of overpayment to the Petitioner. If the Petitioner still disagrees with the overpayment determination, the Petitioner will have to file a NEW appeal.

CONCLUSIONS OF LAW

- 1) The agency did not establish that it followed correct procedures to recoup an overpayment.
- 2) The agency did not correctly determine the amount of the overpayment.
- 3) Any overpayment that did occur was due to agency / non-client error.

THEREFORE, it is

ORDERED

That the agency issue an overpayment notice to the Petitioner, amending claim 090040610 to reflect an overpayment for December 2013 through March 2014, only and to reflect agency / non-client error as the

cause of the overpayment. The agency shall take all administrative steps necessary to complete these tasks by the final action date in this case, August 4, 2014.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

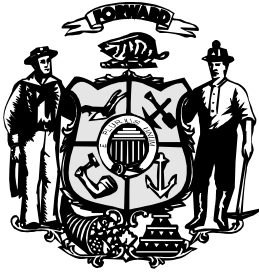
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of July, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 30, 2014.

Waukesha County Health and Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability